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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1969

No. 280

CITY OF DETROIT, a municipal corporation,
BOARD OF ASSESSORS OF THE CITY OF DETROIT,
Petitioners-Plaintiffs,
MICHIGAN STATE TAX COMMISSION,
Appellant,
v.
AMBASSADOR STEEL COMPANY,
a Michigan corporation,
ADVANCE STEEL COMPANY,
a Michigan corporation,
AMERICAN STEEL CORPORATION,
a Michigan corporation,
BARSTEEL CORPORATION,
a Michigan corporation,
CONTRACTORS STEEL COMPANY,
a Michigan corporation,
CRAFT STEEL & SUPPLY COMPANY, INC.,
a Michigan corporation,
EWALD STEEL COMPANY,
a Michigan corporation,
KASLE STEEL CORPORATION,
a Michigan corporation,
KENWAL PRODUCTS CORPORATION,
a Michigan corporation,
PARAGON STEEL CORPORATION,
a Michigan corporation,
TITAN STEEL COMPANY,
a Michigan corporation,
Respondents.

## BRIEF OF RESPONDENT CONTRACTORS STEEL COMPANY IN OPPOSITION TO GRANTING OF THE PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS, DIVISION 1, AND APPENDIX

(For Attorneys, See Inside Front Cover)

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## AUTHORITIES CITED


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## BRIEF OF RESPONDENT CONTRACTORS STEEL COMPANY IN OPPOSITION TO GRANTING OF THE PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS, DIVISION 1, AND APPENDIX

To: The Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respondent, Contractors Steel Company, respectfully opposes the granting of a Writ of Certiorari to review the judgment of the Michigan Court of Appeals, Division 1, entered in the above-entitled consolidated cases on December 2, 1968.

## I. OPINIONS BELOW

The opinion of the Michigan Court of Appeals (Appendix A, *infra*), an appellate court of said State appears in 165 N.W. 2d 875 (1968).

The Opinion of the Michigan State Tax Commission dated January 26, 1967 is unreported and is hereto attached as Appendix B, *infra*.

Denial of Application for timely Leave to Appeal to the Michigan Supreme Court was issued March 20, 1969, as indicated in 165 N.W. 2d 875 (1968) and is marked Appendix C and is hereto attached.

Order of the Michigan Supreme Court on May 21, 1969 denying the Motion of the City of Detroit and the Board of Assessors of the City of Detroit to stay enforcement of an Order of this Court pending Petition for Certiorari to the Supreme Court of the United States is unreported and is presented in Appendix D attached hereto.

## II. JURISDICTION

(1) Involved herein are appeals from the Michigan Court of Appeals which vacated certain assessments placed on Detroit's 1966 personal property rolls by the Michigan State Tax Commission against taxpayers. The Michigan Court of Appeals held the taxpayers (respondents herein) were entitled to immunity from taxation thereof by virtue of Article I, Sec. 10, Cl. 2 of the Constitution of the United States. (See Appendix A, *infra*).

A timely application for leave to appeal filed with the Michigan Supreme Court by petitioners was denied March 20, 1969. (See Appendix C, *infra*).

(2) Jurisdiction of this Court to deny writ of certiorari is invoked under C. 646, 62 Stat. 929 (28 U.S.C.A. 1257 (3)).

(3) Under 28 U.S.C. §2101 (c) the last date for the plaintiff-petitioner to file its petition in this Court was June 20, 1969.

The notice served on this respondent shows on its face that the petition for certiorari was filed late, to-wit, June 25, 1969.

This Brief is submitted in behalf of Contractors Steel Company, one of the respondent taxpayers.

## III. QUESTIONS PRESENTED FOR REVIEW

(1) Should certiorari be granted in the instant case if the Federal Law is settled?

The Michigan Supreme Court said NO
The respondent defendants say NO.

(2) Should certiorari be granted in the instant case when the Michigan Supreme Court has stated that the petitioner-plaintiffs have no meritorious basis for their appeal?

The respondent-defendants say NO.

(3) Should certiorari be granted in the instant case when the Michigan Supreme Court has stated there is no clearly erroneous application of the settled law to the facts?

The respondent-defendant says NO.

(4) Is steel which the respondent-defendant caused to be imported into the United States entitled to immunity from City of Detroit personal property taxation under the import-export clause of the United States Constitution?

The Michigan Court of Appeals said YES.
The Michigan Supreme Court said YES.
Respondent-defendant says YES.

5) Should certiorari be granted in the instant case when the plaintiff-petitioner filed its petition in this Court more than 90 days after the final ruling of the Michigan Supreme Court, all in violation of 28 U.S.C. §2101(c)?

Respondent-defendant says NO.

## IV. CONSTITUTIONAL PROVISION INVOLVED

The provision of Article I, Section 8, Cl. 1 of the United States Constitution reads as follows:

> "The Congress shall have power to lay and collect taxes, duties, imposts and excises . . .; but all duties, imposts and excises shall be uniform throughout the United Stats."

The provisions of Article I, Section 10, Cl. 2 of the United States Constitution reads as follows:

> "No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."

## V. STATEMENT OF FACTS IN THE CASE

Contractors Steel Company, a Michigan corporation, sometimes hereinafter referred to as the taxpayer, filed properly and timely a personal property tax return for the year 1966 with the City of Detroit. The said tax return claimed as exempt from personal property taxation certain imported steel in the original bundles, pursuant to the provisions of the Federal Constitution. The only issue originally involved between the City of Detroit Board of Assessors and the taxpayer was whether the taxpayer was entitled to the exemption claimed.

The Detroit Common Council sitting as a Board of Review ruled that the steel was exempt from taxation. The Board of Assessors took an appeal to the Michigan State Tax Commission. The Michigan State Tax Commission, whose opinion is annexed hereto as Appendix B stated that it was not truly competent to rule on the matter and suggested that the taxpayers, whose cases had been consolidated, seek a determination in a regular Court. After stating its position in very generalized terms and without any citation of facts in the underlying documents, all of which were introduced in evidence, the Michigan State Tax Commission ruled that the steel in question was not immune from personal property taxation.

At the hearing before the Michigan State Tax Commission the Assessors did admit that title to the steel in question was in the taxpayer before the steel arrived in the United States. Nonetheless, the Assessors claimed that the taxpayer was not the importer entitled to the immunity under the Federal Constitution. Other than generalized statements by the witnesses for the Assessors, no basis was ever given in testimony or otherwise as to why the Assessors felt the steel in question was not entitled to the immunity.

After receiving the opinion of the Michigan State Tax Commission, the taxpayer appealed to the Michigan Court of Appeals which is an intermediate Court. Briefs were submitted to the Michigan Court of Appeals and oral arguments were had. The Michigan Court of Appeals did thereupon render its decision, which is annexed hereto as Appendix A. The Michigan Court of Appeals reversed the Michigan State Tax Commission and reinstated the immunity originally granted by the Detroit Common Council. The Michigan Court of Appeals ruled that the

taxpayer was the efficient cause of the importation, that the steel was in the original packages and that the immunity should be granted to the taxpayer.

Th Board of Assessors did thereupon apply to the Michigan Supreme Court for leave to appeal. The application for leave to appeal was "DENIED, as plaintiffs and appellantshave failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous."

The Board of Assessors of the City of Detroit did thereupon petition this Court for writ of certiorari. In making its petition to this Court, the Board of Assessors of the City of Detroit did change the order of the names of the respondents for reasons best known to it, but failed to send a certified transcript of the record to the United States Supreme Court in accordance with its Court Rules. Subsequently, the Board of Assessors filed a supplemental petition, seeking to correct or remedy its oversight.

This Brief of Contractors Steel Company, a Michigan corporation, is submitted in opposition to the granting of the petition for writ of certiorari.

## VI. ARGUMENT

The law in the instant case is settled. *Brown v. Maryland*, 12 Wheat 419 (1827); *Hooven and Allison Company v. Evatt* (1945), 324 U. S. 652, 65 S. Ct. 876.

The documentation supporting the position of the taxpayer is in the record which was or should have been submitted to this Court. Based upon the documentation, the Michigan Court of Appeals held that this taxpayer was entitled to the immunity and that the tax should no have been levied upon Construction Steel Company.

The Michigan Supreme Court concurred in the finding of the Court of Appeals and denied the Assessors' application for leave to appeal to it. The Court held that the Assessors had no meritorious basis for its appeal and that there was no clearly erroneous application of the law to the facts in the instant case.

The taxpayer feels that since the Federal Law is settled and there is no erroneous application of law to facts, this Court should refuse a writ of certiorari in the instant case. *A fortiori*, where the Assessors failed to comply with the Court Rules of this Court.

Although the respondent taxpayer does not believe that an argument on the merits is called for at this juncture, it is pertinent to note the following facts:

(a) Title to the steel in question was in the taxpayer while the steel was still in Europe.

(b) The insurance documents insuring the shipment against loss or domage in transit from Europe to Detroit were endorsed to the taxpayer.

(c) In the event of a loss or damage, the taxpayer was obligated to pay for the steel and process its own claim under the insurance policy.

(d) That the taxpayer paid for the steel after arrival of the steel in Detroit and sometimes 30, 60 or 90 days after the arrival of the steel in Detroit on an open account basis.

(e) That from the time of the arrival of the steel in Detroit, the steel was always in the physical possession and custody of the taxpayer and kept in the original bundles.

(f) That the taxpayer does no processing of steel and did not use the steel for its own purposes.

(g) That when the taxpayer ordered the steel originally, three to five months prior to manufacture, a number was assigned to that order, which number subsequently appeared on all later documents, including but not limited to the following:

(i) The confirmation, including the terms as set forth on the reverse side thereof.

(ii) The bill of lading

(iii) The shipping documents

(iv) The notices and dates of shipment

(v) The invoices

This number was not used to identify any other steel fabricated at that foreign mill.

(h) The European mill which filled the order placed a tag on each bundle of steel shipped in accordance with the said order, which tag also contained the exact same reference number referred to in paragraph (g) so as to identify the steel with the order. Samples of the said tags were submitted at the hearing.

(i) The tagged steel which was delivered at the port of Detroit directly from the foreign point of shipment was identical with the steel ordered previously by the taxpayer.

Based upon the above facts, the Michigan Court of Appeals ruled that the taxpayer was in fact the importer or the efficient cause of the importation and was, therefore, entitled to the immunity granted by the United States Constitution. This Court has ruled and settled the law in this area on numerous occasions, two of the most important cases being *Brown v. Maryland,* 12 Wheat 419 (1827)

and *Hooven and Allison Company v. Evatt*, 324 U.S. 652, 65 S. Ct. 876, (1945).

The levying of a personal property tax on this steel, which everyone admits is imported steel in the original packages, violates the provisions of the Federal Constitution. It is crystal clear that the taxpayer in this instance was in fact the importer and all of the documents in the file support this position.

The conclusion is inescapable that the Board of Assessors was simply trying to get further revenues for the City of Detroit without any regard to the law. If the Michigan Court of Appeals and the Michigan Supreme Court had not sustained in this matter, commerce in the United States could well be brought to a standstill by the multiplication of local taxes on importation in clear violation of the Constitutional intent. Sections 8 and 10 of Article I of the United States Constitution are quite clear. Section 10 states:

> "No state shall . . . lay an impost or duty on imports and exports . . ."

Section 8 further gives Congress the exclusive power to regulate such commerce with foreign nations. In *Brown v. Maryland, supra*, the Court said at page 414:

> "While remaining the property of the importer, in his warehouse, in the original form or package in which it is imported, the tax upon it is too plainly a duty on import to escape the prohibition of the Constitution."

The Court further went on to say at page 448:

> "Any penalty inflicted on the importer for selling the article in his character of importer, must be in opposition to the Act of Congress which authorizes importation."

In *Hooven and Allison Company, supra,* this Court reaffirmed *Brown v. Maryland* and said:

> ". . . This Court has held, without a dissenting voice, that things imported are imports and entitled to immunity conferred by the Constitution; that the immunity survives their arrival in this country and continues until they are sold, removed from the original package, or put to the use for which they were imported."

In *Hooven and Allison* the following facts which are identical to the facts in the case at bar were established:

1. The taxpayer orders the merchandise
2. The merchandise has distinctive markings on it referrable to the taxpayer's contract of purchase
3. Notices are sent and ultimately the merchandise clears the customs and arrives at the taxpayer's warehouse.
4. When the broker is acting, he is acting as an accommodation to the taxpayer
5. The merchandise involved belonged to the taxpayer

Based upon the above, this Court said at page 661 in *Hooven and Allison:*

> "Petitioner's contracts of purchase are the inducing and efficient cause of bringing the merchandise into the country, *which is importation.*" (Emphasis supplied)

At page 661, the Court went further on to say:

> "From the moment of shipment, the taxed merchandise was identified and appropriated to the purchase contract and to that ultimate purpose, by

> both seller and the buyer. (Taxpayer) could resell the merchandise while it was in transit. The risk of loss from change of market value was on the (taxpayer), save as it might insure against such loss at its own expense. The right to demand, receive and use the merchandise, subject only to payment of the contract 'landed price' was in (taxpayer) and obviously if the possibility of the seller's right of stoppage *in transitu*, the carrier's lien or the necessity of payment of customs duties are to be regarded as inconsistent with importation, there could be few importations or few importers in the Constitutional sense. For there are few who are not subject to some or all of these contingencies."

In view of the fact that Contractors Steel, in the case at bar, actually owned the steel before it arrived in the United States, its position is even stronger.

At page 662 in the *Hooven and Allison* case, this Court said:

> "For the purpose of determining whether petitioner was the importer in the Constitutional sense, it is immaterial whether the title to the merchandise imported vested in him who caused it to be brought to this country at the time of shipment, or only after its arrival here."

On page 663, the Court said:

> "In determining the meaning and application of the constitutional provision, we are concerned with matters of substance not of form. When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction, considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or on the technical procedures by which it is effected. It is common knowledge to lawyers

> and business men that vast quantities of merchandise are annually imported into this country by purchasers resident here for sale or manufacture here. Sometimes the buyer completes the purchase abroad, in person, and ships to this country; sometimes, as in this case, the purchase is on unsecured credit, but more often it is under contract by which the vendor reserves in himself or his agent or a banker a lien or title as security for payment of the purchase price on or after arrival. To say that the purchaser is any the less an importer in the one sense than in the other, is to ignore the Constitutional purpose and substitute form for substance."

It is crystal clear, both in form and in substance, that Contractors Steel Company, the taxpayer herein, is the importer and is the efficient cause of the importation and is entitled to the Constitutional immunity for the steel imported. The fact has been established beyond the shadow of a doubt that the importation is caused by the original order placed by Contractors Steel as above described.

## VII. CONCLUSION

The Board of Assessors has failed to advance any real basis for the granting of a writ of certiorari. The Michigan Court of Appeals has fully considered all of the facts and has ruled that Contractors Steel Company is the efficient cause of the importation and/or the importer. The Federal law is settled and there has clearly been no erroneous application of the law to the facts. The Michigan Attorney General has abandoned the contest and has failed to join the Board of Assessors in requesting a writ of certiorari from this Court. The Michigan Supreme Court in denying the application for leave to appeal was correct in saying "plaintiffs and appellants have failed to persuade the Court that they have a meritorious basis for appeal or

that the decision of the Court of Appeals was clearly erroneous."

In the light of the foregoing, respondent respectfully prays that the petition for writ of certiorari filed by the Board of Assessors for the City of Detroit be denied with costs and attorney fees taxed to the respondents.

Respectfully submitted,

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## APPENDIX A

## DECISION OF THE COURT OF APPEALS

State of Michigan—Court of Appeals

Division 1

| | |
|---|---|
| City of Detroit, a municipal corporation, Board of Assessors of the City of Detroit, Plaintiffs-Appellees, Michigan State Tax Commission, Appellee, v. Kenwal Products Corporation, a Michigan corporation Defendant-Appellant, | No. 3323 |
| Kasle Steel Corporation, a Michigan Corporation, | No. 3330 |
| Bar Steel Corporation, a Michigan Corporation, Defendant-Appellant, | No. 3331 |
| Craft Steel & Supply Company, Inc., a Michigan Corporation, Defendant-Appellant, | No. 3333 |
| Contractors Steel Company, a Michigan Corporation, Defendant-Appellant, | No. 3336 |
| Titan Steel Company, a Michigan Corporation, Defendant-Appellant, | No. 3349 |
| Ambassador Steel Company, a Michigan Corporation, Defendant-Appellant, | No. 3350 |
| Ewald Steel Company, a Michigan Corporation, Defendant-Appellant, | No. 3351 |
| Paragon Steel Corporation, a Michigan Corporation, Defendant-Appellant, | No. 3375 |
| American Steel Corporation, a Michigan Corporation, Defendant-Appellant, | No. 3377 |
| Advance Steel Company, a Michigan Corporation, Defendant-Appellant. | No. 3527 |

Before: T. G. Kavanagh, P.J., Burns and Fitzgerald, J.J.

Burns, J.

Eleven Detroit steel warehousing companies appeal by leave from tax commission decisions which ordered the value of certain steel to be placed on the city of Detroit personal property assessment rolls. The steel in question was shipped from foreign ports to Detroit where after clearing customs it was delivered to appellants' warehouses and stored for resale. Appellants claim that the steel was immune from property taxes because of US Const., art 1, §10, cl. 2, and cases which have interpreted that provision.

In *Brown v. Maryland* (1827), 25 US 419 (6 L ed 678), the Supreme Court invalidated a state licensing tax and held that a state could not tax imports as long as the property remained in its original form or package. *Low v. Austin* (1872), 80 US 29 (20 L ed 517), expanded the principles of *Brown v. Maryland* to prohibit states from levying *ad valorem* taxes on goods which have not lost their character as imports. See also *City of Detroit v. Lake Superior Paper Company* (1918), 202 Mich 22. Subsequent to *Brown v. Maryland, supra*, it has become well-established that imports lose their constitutional immunity when the importer (1) sells them or (2) "breaks up the packages" or (3) puts them to the use for which they were imported. *Youngstown Sheet & Tube Company v. Bowers* (1959), 358 US 534 (78 S Ct 383, 3 L ed 2d 490).

At the time of assessment in the present cases it appears that the imported steel was in its original package and that it was not being put to any use for which it was imported. The city of Detroit contends, and the tax commission held, that domestic based companies imported the steel and sold it to appellants, thereby making the steel

lose its character as an import. Appellants argue that they are the importers.

The United States Supreme Court spoke to the issue of who is an importer in *Hooven & Allison Company v. Evatt* (1945), 324 US 652, 663, 664 (65 S Ct 870, 89 L ed 1252):

> "When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction, considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or on the technical procedures by which it is effected. It is common knowledge to lawyers and businessmen that vast quantities of merchandise are annually imported into this country by purchasers resident here, for sale or manufacture here. Sometimes the buyer completes the purchase abroad, in person, and ships to this country; sometimes, as in this case, the purchase is on unsecured credit; but more often it is under contracts by which the vendor reserves in himself or his agent or a banker a lien or title as security for payment of the purchase price on or after arrival. To say that the purchaser is any the less an importer in the one case than in the others, is to ignore the constitutional purpose and substitute form for substance. * * *
>
> "It is enough for present purposes that the merchandise in this case was imported; and that petitioner was the efficient cause of its importation, the purpose and effect of which was petitioner's acquisition, of the merchandise for its manufacture in finished goods. We conclude that petitioner was the importer, and that the merchandise in its hands was entitled to the consti-

tutional tax immunity, surviving delivery of the imports to it."

There are many factual similarities between the *Hooven Case, supra,* and these consolidated steel cases. In both instances the taxpayers placed orders with domestic corporate intermediaries for merchandise which originated in a foreign country. The price included charges for ocean freight, insurance, and customs. The goods were specifically marked when they left the foreign port to identify the product for the taxpayer, except in a few instances when the sales took place while the steel was en route. In *Hooven* the contract for sale between the domestic seaboard company and the Ohio manufacturer read, "for the account of" the foreign producer. Payment went directly from the Ohio manufacturer to the foreign producer and credit was extended by the foreign company.

In the present cases the appellants contracted with companies which extended their own credit and received all payments for their own accounts. The precise relationship between the domestic companies and the foreign mills (or brokers in some cases) does not clearly appear on the records, but it can be discerned that the domestic concerns entered into separate and distinct contracts with the foreign sellers.

There are two transactions involved in the *Kenwal Case* that differ from the other transactions in these consolidated cases. Kenwal entered into a joint venture with M. W. Zack Metal Company and the Donovan Wire & Iron Company. Zack and Donovan each ordered an entire shipload of steel through intermediaries, with the agreement that Kenwal would participate by taking half of each shipload. For convenience, all of the documents were made in the name of Zack and Donovan. We see no reason to

treat these transactions any differently than the other sales involved in these consolidated cases.

In determining who is the "efficient cause" of importatioon in the constitutional sense, we must look beyond matters of form to the substance of the transaction. Perhaps the most significant substantive matter which the Supreme Court emphasized in *Hooven, supra,* 661, was the fact that performance of the contract called for, and necessarily restulted in, importation of the merchandise. Appellant's contracts with the domestic intermediaries specified that the steel was to be shipped from a foreign country or was already en route directly to the appellants. Performance of these contracts then, as in *Hooven,* called for and necessarily resulted in, importation. In our opinion the transactions in these cases fall within the scope of the Hooven decision.

The orders of the tax commission are vacated.

## APPENDIX B

State of Michigan

Before the Michigan State Tax Commission

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967 at Lansing, Michigan

IN RE PETITION No. 22-5495 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 30, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, belonging to Contractors Steel Company, 9353 Freeland, Detroit, Michigan.

The petitioner, the Detroit Board of Assessors contends that personal property was erroneously omitted from the assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C.L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on November 22, 1966 at Detroit, Michigan, at whiche hearing the taxpayer of the property in question was represented by counsel.

After consideratdon of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. 22-5495 asks the current assessment of $34,860 to be raised to $93,140 because of additional value revealed in an audit by a member of the Board of Assessors staff.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer from an importer and thereby has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that they are the "importers" and as such the steel in question retains its immunity from ad valorem taxation as an "imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

> "No State shall, without the consent of the Congress, lay any imposts or duties on Imports or Exports . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value, or a properly weighted mathematical average for the local unit of $45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely current by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment roll as provided in Sec. 211.152 C. L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has reservations. On the basis of the documents, exhibits, etc, there are doubts as to whether or not the goods in question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true cash value in order to achieve the correct assessed valuation. It is determined in the opinion of the Commission that the undisputed true cash value of the property involved is $186,270 and the assessment level is 45.25% of true cash value. Therefore, appellants' assessment should be $84,300. Since the proposed assessment per Petition No. 22-5495 is $93,140 it is clearly apparent that the proposed assessment is signnificantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledged that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission

directs his attention to Sec. 211.53 of the C.L. of Mich. 1948, or in an action for a declaration of rights.

WHEREFORE, it is hereby ordered that the amount of $84,300 be placed upon the assessment roll as the true and lawful value of such property.

/s/ Robert L. Purnell, Chairman

/s/ R. Gerald Barr, Commissioner

/s/ Ward G. Dexel, Commissioner

February 1, 1967.

## APPENDIX C

### SUPREME COURT ORDER DENYING APPLICATION FOR LEAVE TO APPEAL AND STAY OF PROCEEDINGS

At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 20th day of March in the year of our Lord one thousand nine hundred and sixty-nine.

Present the Honorable Thomas E. Brennan, Chief Justice, John R. Dethmers, Harry F. Kelly, Eugene F. Black, Thomas M. Kavanagh, Paul L. Adams, Thomas G. Kavanagh, Associate Justices.

On order of the Court (T. G. Kavanagh, J., not participatinng), the application for leave to appeal is considered, and the same is hereby Denied, as plaintiffs and appellants have failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous. Plaintiffs' and appellants' request for a stay of proceedings is Denied, as thereby being moot.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 20th day of March in the year of our Lord one thousand nine hundred and sixty-nine.

/s/ Harold Hoag,
Deputy Clerk.

(Seal)

## APPENDIX D

### SUPREME COURT ORDER DENYING STAY OF ENFORCEMENT

As a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 19th day of May in the year of our Lord one thousand nine hundred and sixty-nine.

Present the Honorable Thomas E. Brennan, Chief Justice, John R. Dethmers, Harry F. Kelly, Eugene F. Black, Thomas M. Kavanagh, Paul L. Adams, Thomas G. Kavanagh, Associate Justices.

On order of the Court, the motion by the city of Detroit and the Board of Assessors of the city of Detroit, plaintiffs and appellants, to stay enforcement of an order of this Court pending petition for certiorari to the Supreme Court of the United States is considered, and the same is hereby Denied, as no immediate emergency has been alleged or shown.

State of Michian—ss.

I, Donald F. Winters, Clerk of the Supreme Court of State of Michigan, do hereby certify that the foregoing is a true and correct copy or an order entered in said court and said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 21st day of May in the year of our Lord one thousand nine hundred and sixty-nine.

/s/ Donald F. Winters.

(Seal) Clerk.

SUPREME COURT, U. S.
Office Supreme Court, U.S.
FILED
JUL 22 1969
JOHN F. DAVIS, CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1969

No. 280

CITY OF DETROIT, a municipal corporation,
BOARD OF ASSESSORS OF THE CITY OF DETROIT,
Petitioners-Plaintiffs,
MICHIGAN STATE TAX COMMISSION,
Appellant,
v.
AMBASSADOR STEEL COMPANY, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS, DIVISION I

## BRIEF FOR RESPONDENT BARSTEEL CORPORATION IN OPPOSITION AND APPENDIX

## CONCURRENCE IN BRIEF BY RESPONDENTS CRAFT STEEL & SUPPLY COMPANY, INC. AND KENWAL PRODUCTS CORPORATION

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### OPINIONS BELOW

The petitioners have failed to provide the court with a copy of the unreported order of the Michigan Supreme Court, dated March 20, 1969, denying petitioners' application for leave to appeal. A copy of said order is printed in Appendix A attached hereto. In addition, a copy of the unreported opinion of the Michigan State Tax Commission, dated February 3, 1967, in this respondent's case was not appended to the petition and is therefore printed in Appendix B attached hereto.

## JURISDICTION

On July 3, 1969, the undersigned received notice from the attorneys for petitioners, pursuant to Supreme Court Rule 21(2), that a petition for a writ of certiorari in this case was filed on the 25th day of June, 1969. Since the judgment of the Michigan Supreme Court denying the petitioners' application for leave to appeal was entered on March 20, 1969, it is obvious that the petition was filed more than 90 days after the entry of judgment. The time for applying for the writ was not extended. Therefore, the petition is untimely, and this Court does not have jurisdiction to entertain it. 28 U.S.C. §2101(c).

The petitioners' attorneys have filed a "Supplemental Petition", admitting the petition to be untimely but attempting to justify their laches. Such "Supplemental Petition" should not be given any weight by this Court in that it patently shows their lack of due diligence in not filing the petition in time, and, in any event, an attempted justification of laches cannot cure the fatal jurisdictional defect of an untimely filing.

## QUESTIONS PRESENTED

The petition for certiorari sets out that the decision below presents three questions for review. Respondent respectfully submits that the only question involved is the following:

> Was respondent the importer, in the constitutional sense, of certain foreign steel held by it on December 31, 1965, in the original unbroken packages, thereby causing such steel to be immune from ad valorem taxa-

tion by reason of Article I, Section 10, Clause, 2, of the United States Constitution?

The Michigan Court of Appeals answered this question, "Yes".

The Michigan Supreme Court, in refusing to review said decision, impliedly answered this question, "Yes".

The respondent contends the answer should be "Yes".

## STATEMENT

The pertinent facts relating to the particular case involving this respondent are not set forth in the petition and are therefore presented herein.

### (a) Chronology of Events

On December 31, 1965, the tax assessment date in the State of Michigan, respondent Barsteel Corporation owned and operated a steel warehouse in the City of Detroit, purchasing steel primarily in the forms of coils of different gauges, or thicknesses, and widths and thereafter slitting or cutting such steel, at the time of sale to its customers, pursuant to the particular customer's order.

Included in respondent's inventory on the December 31, 1965 assessment date were coils of steel emanating from three sources: (i) domestic steel mills; (ii) Japanese steel mills; and (iii) European steel mills. The respondent on its personal property statement, filed under oath with the City of Detroit, claimed immunity from taxation only with respect to unbroken coils of steel emanating from the foreign sources and it attached a detailed schedule documenting the particular coils of steel involved.